

No. 82-1998

Supreme Court, U.S.  
FILED

DEC 8 1983

ALEXANDER L. STEVAS  
CLERK

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**In the Supreme Court of the United States**

OCTOBER TERM, 1983

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JAMES G. WATT,  
SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

THE COMMUNITY FOR CREATIVE NON-VIOLENCE, ET AL.

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ON WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI  
FILED JUNE 7, 1983  
CERTIORARI GRANTED OCTOBER 3, 1983

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\*The opinions of the court of appeals and the district court appear in the appendix to the petition for a writ of certiorari and have not been reproduced.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[DOCKET ENTRIES]

DATE	NR.	PROCEEDINGS
1982		
Sep 7	1	COMPLAINT; appearance; exhibits A, B1-B2, C.
Sep 7	2	MOTION by plttfs. for leave to proceed in forma pauperis; memorandum of points and authorities in support; declarations of Mitch Snyder, Mary Ellen Hombs, Harold Moss, Clarence West, Monroe Kylandezes, Fred Randall and Mike Scott.
Sep 7		LEAVE to file without prepayment of costs granted. (FIAT) (Signed 9/3/82) HART, J.
Sep 7		SUMMONS (4) issued.
Sep 13	3	CASE reassigned from Judge Pratt to Judge Richey.
Sep 16	4	AFFIDAVIT of service of summons and complaint upon U.S. Attorney and deft. Watt on 9/7/82, and upon deft. Fish on 9/8/82.
Oct 7	5	MOTION by plttf. for summary judgment; statement of material facts; memorandum of points and authorities in support; table of contents; table of authorities; attachment; table of exhibits; exhibits 1a-1d, 2a-2c, 3a-3d, 4a-4b; table of declarations; declarations of Clarence West, Anthony Primus, James Wilson, Mitch Snyder, Mary Ellen Hombs, Harold Moss, Madeleine Adamson, Barbara Gamarekian, Carol Fennelly and Richard Miller.
Oct 15	6	CASE reassigned from Judge Richey to Judge Pratt.
Oct 18	7	MOTION of defts. for enlargement of time and memorandum of P&A's in support.

- Oct 20      8 OPPOSITION by pltffs. to defts' request for a ten-day extension.
- Oct 21      9 REQUEST by pltffs. for an oral hearing.
- Oct 21      10 MOTION by pltffs. for leave to file a supplemental declaration and memorandum of points and authorities in support thereof; exhibit (declaration).
- Oct 26      11 ORDER filed 10/22/82 allowing defts. to respond to pltffs' motion for summary judgment by 10/28/82. (N) PRATT, J.
- Oct 29      12 MOTION by defts. for summary judgment; statement of material facts; exhibits A-J.
- Nov 9      13 MEMORANDUM by pltfs. of Points and Authorities in opposition to defts.' motion for summary judgment and in reply to defts.' opposition to pltffs.' motion for summary judgment; Exhibits 5 & 6; Statement of Genuine Issues.
- Nov 10      14 ANSWER of deft. to complaint.
- Nov 10      CALENDARED. CD/N
- Nov 12      15 MOTION by pltffs. for preliminary injunction; memorandum of points and authorities in support; exhibit A; second declarations of Mitch Snyder and Harold Moss.
- Nov 12      16 MOTION by pltffs. for scheduling of hearing and status call and to shorten time for defts' response to motion for preliminary injunction; memorandum of points and authorities in support.
- Nov 22      17 REPLY by defts. to pltffs' opposition to defts' motion for summary judgment and in opposition to pltffs' motion for a preliminary injunction; exhibits A-C.
- Nov 23      18 ERRATA by defts.
- Dec 1      19 NOTICE by pltffs. of filing declarations; attachment.

- Dec 3            MOTION of plttf. for preliminary injunction, heard and denied; cross-motion for summary judgment heard and defts' motion granted; motion of plttf. for injunction pending appeal heard and denied. (Rep: V. Marshall) PRATT, J.
- Dec 3        20    MOTION of plttf. for injunction pending appeal denied. (FIAT) (N) PRATT, J.
- Dec 3        21    NOTICE of appeal by plttfs. from denial of 12/3/82; in forma pauperis—no fee; copy sent to John D. Bates.
- Dec 3            COPIES of notice of appeal and docket entries transmitted to U.S.C.A.; U.S.C.A. # \_\_\_\_.
- Dec 3            TRANSCRIPT of proceedings taken 12/3/82; pages 1-5; Rep: V. Marshall.
- Dec 6        22    OBJECTIONS of plttfs to defts' proposed findings of fact and conclusions of law.
- Dec 6        23    NOTICE of defts of filing proposed findings of fact and conclusions of law and proposed order.

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GENERAL DOCKET

DATE	FILINGS—PROCEEDINGS
(T)12-07-82	Copy of notice of appeal and docket entries from Clerk, District Court (n-2)
(J)12-07-82	4—Appellants' emergency motion for injunction pending appeal (p-7)
(V)12-09-82	Clerk's order, sua sponte, that appellee respond to the pending motion for injunction and address the merits of the appeal, no later than 4:00 p.m. on Friday, December 10, 1982
(T)12-10-82	4—Appellants' motion to consolidate Nos. 82-2445 & 82-2477 (p-10)
(T)12-10-82	4—Appellees' motion for summary affirmance (p-10)
(T)12-10-82	4—Appellees' response in opposition to appellants' emergency motion for injunction pending appeal (p-10)
(T)12-14-82	Certified Original Record (2) volumes (n-2) (also the Record in No. 82-2477)
(J)12-14-82	4—Appellants' reply to appellees' opposition to emergency motion for injunction pending appeal and opposition to appellees' motion for summary affirmance (p-14)
(V)12-16-82	Clerk's order that the motion of appellants to consolidate Nos. 82-2445 and 82-2477 is granted and the motion captioned cases are consolidated for all purposes
(J)12-16-82	4—Appellees' reply to appellants' opposition to appellees' motion for summary affirmance (p-16)

- (V)12-20-82 Per Curiam order that appellants' emergency motion for injunction pending appeal is denied. Appellants have failed to meet the requirements for obtaining an injunction pending appeal. See *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977); *Virginia Petroleum Jobber Ass'n v. FPC*, 259 F.2d 921 (D.C. Cir. 1958) (per curiam). This denial of extraordinary relief does not constitute a determination on the merits of the case which the Court is proceeding expeditiously to consider; Wald, Ginsburg and Scalia, CJs
- (B)12-23-82 Per Curiam order, sua sponte, that argument herein will be held at 2:00 p.m. on Tuesday, December 28, 1982. Counsel shall confine their argument to the questions set forth in the attached memorandum. Each side will be allotted 24 minutes time at argument; Wald, Ginsburg and Scalia, CJ's
- (B)12-28-82 ARGUED before Wald, Ginsburg and Scalia, CJ's
- (B)01-05-83 Per Curiam order, en banc, sua sponte, that these cases shall be argued before the court, en banc, at 2:00 p.m. on Friday, January 14, 1983. The Court does not contemplate the filing of any additional briefs; CJ Robinson; Wright, Tamm, MacKinnon, Wilkey, Wald, Mikva, Edwards, Ginsburg, Bork and Scalia, CJ's
- (C)01-11-83 Clerk's order, en banc, sua sponte, that the following times are allotted for oral argument: Appellants—30 minutes; Appellees—30 minutes



- (B)01-14-83 ARGUED en banc before CJ Robinson: Wright, MacKinnon, Wilkey, Wald, Mikva, Edwards, Ginsburg and Scalia, CJ's. At the outset, the Court announced that Circuit Judge Tamm and Circuit Judge Bork are members of this panel, but are unable to be present. They will participate in the decision of this case on the record, briefs and tape recordings of oral argument. On motion of Ms. Kanter, Mr. Neubourne, a member of the bar and the State of New York, was allowed to argue pro hac vice for appellants.
- (C)01-27-83 Certified Original Supplemental Record containing one envelope of photographs (Also the record in 82-2477)
- (S)03-09-83 Opinion for the Court Per Curiam.  
 Separate opinion filed by Circuit Judge Mikva in which Circuit Judge Wald concurs, in support of a judgment reversing. Chief Judge Robinson and Circuit Judge Wright file a statement joining in the judgment and concurring in Circuit Judge Mikva's opinion with a caveat. Circuit Judge Edwards files an opinion joining in the judgment and concurring partially in Circuit Judge Mikva's opinion. Circuit Judge Ginsburg files an opinion joining in the judgment. Circuit Judge Wilkey files a dissenting opinion, in which Circuit Judges Tamm, MacKinnon, Bork and Scalia concur. Circuit Judge Scalia files a dissenting opinion, in which Circuit Judges MacKinnon and Bork concur.
- (S)03-09-83 Judgment by this Court en banc that the judgment of the District Court on appeal herein is reversed and these cases are remanded to the District Court with instructions to enjoin appellees from prohibiting sleeping by demonstrators in tents on sites authorized for appellants' demonstration, in accordance with the per curiam opinion of this Court filed herein this date.



- (S)03-09-83 Per Curiam order by the Court sua sponte that the clerk shall issue the mandate herein on March 15, 1983.
- (J)03-10-83 15—Appellees' motion for stay of mandate pending application of the Supreme Court for writ of certiorari (p-10)
- (G)03-14-83 4—Appellants' opposition to motion for stay of mandate (p-14)
- (S)03-15-83 Per Curiam order by the Court that appellees' motion for stay of mandate is denied and the Clerk is directed to issue the mandate herein forthwith.
- (S)03-15-83 Copy of opinion and certified copies of judgment and orders of 3-9-83 and 3-15-83 issued to District Court.
- (S)03-17-83 Per Curiam order by the court en banc that the mandate of this Court issued to the United States District Court for the District of Columbia on 3-15-82 be, and it is hereby, recalled and the Clerk of the District Court is directed to return same forthwith.
- (S)03-17-83 Certified copy of order dated 3-17-83 issued to District Judge and District Court.
- (J)03-22-83 Copy of letter dated 03-21-83 from Clerk, Supreme Court advising that the order heretofore entered by the Chief Justice on 03-17-83, is continued pending the timely filing and disposition of a petition for a writ of certiorari
- (B)03-25-83 Mandate returned to this Court pursuant to order dated 03-17-83
- (J)04-26-83 Receipt dated 04-26-83 from Clerk, District Court for Certified Original Record 2 vols.; supplemental record containing one envelope of photographs
- (J)06-13-83 Notice for Clerk, Supreme Court that petition for writ of certiorari was filed in SC No. 82-1998 on 06-07-83
- (J)10-04-83 Certified copy of order from Clerk, Supreme Court granting petition for writ of certiorari in SC No. 82-1998 on 10-03-83

- (V)10-07-83 Clerk's order that certiorari having been granted, the Clerk of the Supreme Court has requested the transmission of the record on appeal to that court. Accordingly the Clerk of the District Court is requested to certify and return to this court the record on appeal previously transmitted, and since returned, in civil action 82-2501
- (J)10-07-83 Letter from Clerk, Supreme Court dated 10-06-83 asking that the record be certified and transmitted to Supreme Court
- (J)10-11-83 Letter dated 10-07-83 from Chief Deputy Clerk transmitting record to the Supreme Court

EXHIBIT A  
C.A. No. 82-2501

NATIONAL PARK SERVICE, NATIONAL CAPITAL REGION  
APPLICATION FOR A PERMIT TO CONDUCT A DEMONSTRATION OR  
SPECIAL EVENT IN PARK AREAS AND APPLICATION FOR A WAIVER  
OF NUMERICAL LIMITATIONS ON DEMONSTRATIONS FOR  
WHITE HOUSE SIDEWALK\* AND/OR LAFAYETTE PARK

Date of this application

1. Individual and/or organization sponsor(s) The Community for Creative Non-Violence

Address(es) 1345 Euclid St. NW DC 20009

Telephone Nos. (include area code) Day 202-667-6407 Evening 202-667-6407

2. This is an application for a permit to conduct a DEMONSTRATION ☒ SPECIAL EVENT (For definitions, see instructions.)

3. This is an application for a WAIVER OF THE NUMERICAL LIMITATIONS on certain demonstrations. Yes ☐ No ☒ (A waiver is required if it is expected that a demonstration on the White House Sidewalk \* will include more than 750 participants or that a demonstration in Lafayette Park will include more than 3000 participants.)

4. Date(s) of proposed activity: From 12 21 '82 To 12 29 '82  
Month Day Year Month Day Year

Time: Begin 2:00 (a.m.) (p.m.) Terminate: 12 noon (a.m.) (p.m.)

5. Location(s) of proposed activity. (Include assembly and dispersal areas.)

Lafayette Park

The Mall

6. Purpose of proposed activity. To make more visible & concrete the magnitude & the seriousness, and the reality of homelessness

7. Estimated maximum number of participants. (If more than one park area is to be used, list numbers separately for each area.) Lafayette Park - 50  
the Mall - 100

8. Will cleanup people be provided for the area? X yes ☐ no  
How will they be identified? They will be cleaning up.

9. Person(s) in charge of activity. (One person must be listed as in charge of the activity. If different individuals are to be in charge of various activities at different locations, each must be listed.) Lafayette Park, Mary Ellen Hanks; The Mall, Justin Brown  
\*(The "White House Sidewalk" is the sidewalk between East and West Executive Avenues, on the south side of Pennsylvania Avenue N.W.)

-2-

Person in charge Mary Ellen Homb's - Lafayette Park  
Justin Beena - The Mall  
 Address 1345 Euclid St., NW - DC 20009  
 Telephone Nos. (Include area code) Day 202-667-6407 Evening Same

10. Plans for proposed activity. (Include a list of all principal speakers and the complete time schedule for the activity. Include proposed route of any march or parade, and plans for the orderly termination and dispersal of the proposed activity which might affect the regular flow of city traffic.) See attached for details

11. (a) List all props, stages, sound equipment, and other items to be provided by applicant/sponsor. (Include approximate number and size(s) of supports, standards, and handles; necessary medical/sanitary facilities and other similar items.) See attached for details

(b) If boxes, crates, coffins, or similar items will be used, state whether they are to be carried opened or closed, their proposed size, the materials constructed from, and their proposed contents and use. No

12. (a) Do you have any reason to believe or any information indicating that any individual, group, or organization might seek to disrupt the activity for which this application is submitted? \_\_\_\_\_

(b) If YES, list each such individual, group, or organization, with all information as to each, including addresses and telephone numbers. No

13. Marshals: (a) Will applicant/sponsor furnish marshals? (Required for waivers of numerical limitations and for demonstration activities held simultaneously on White House sidewalk and Lafayette Park.) Yes y - in a sense

No \_\_\_\_\_. If YES how many marshals will be furnished? From CCAV

(b) Persons(s) responsible for supervision of marshals (for each location):

Location(s) Lafayette Park  
The Mall  
 Name(s) Mary Ellen Homb's - L.P.  
Justin Beena - The Mall  
 Address(es) 1345 Euclid St., NW DC 20009



Telephone Nos.: Day 202-667-6407 Evening Same

(c) List the functions the marshals are expected to perform: To maintain order & conformity with the US Court of Appeals  
meeting in CCNV Court.

QUESTIONS 14, 15, AND 16 MUST BE ANSWERED IF THIS IS AN APPLICATION FOR A WAIVER OF NUMERICAL LIMITATIONS. IF THIS IS NOT AN APPLICATION FOR A WAIVER, DO NOT ANSWER THESE QUESTIONS.

14. What communications equipment will be provided to the marshals? (Include the number of walkie-talkies, CB radios, bullhorns, public address systems, flashlights, etc.) \_\_\_\_\_

15. How will the marshals be identified? \_\_\_\_\_

16. State specifically the plans for ingress and egress of the participants to and from Lafayette Park including proposed sites for loading and unloading of buses, automobiles, or other forms of transportation which the participants are expected to use (supply chart if necessary). \_\_\_\_\_

APPLICATION NOT VALID UNLESS SIGNED

Member of CCNV

Position of person filing application

Mitch Snyder

Signature of person filing application

Day 202-667-6407 Evening Same

Telephone Nos. of person filing application

Mitch Snyder  
 Typed or printed name of person filing application

1345 Euclid St. NW - DC 20009  
 Address of person filing application

### Community for Creative Non-Violence

345 Euclid Street N.W.  
Washington, D.C. 20009  
202-667-6407

The U.S. Court of Appeals ruling in *CCNV v. Watt* guarantees us the right to maintain a symbolic campsite in Lafayette park, with sleeping permitted as well. However, previous experience prompts us to clarify the situation for next winter, since we intend to stage a similar demonstration at that time.

We have been reminded on a number of occasions that permits are issued on a first-come, first-serve basis, so it seems best to apply for the appropriate permits at this time. While we know that some regulations require applicants to initiate the process within a certain number of days or hours before the proposed demonstration, we are not aware of any regulations that would prohibit us from filing for and receiving a permit several months in advance. We assume that similar events have occurred many times in the past.

We intend to serve Thanksgiving Dinner in Lafayette Park, just as we did in 1981. We will serve a traditional full-course meal, to be cooked and prepared elsewhere. Dinner will be served from 3 to 5 pm, with at least one-half hour before and after needed for setup and cleanup. Thanksgiving will be on November 25.

We plan to re-erect Reaganville on the first day of winter, December 21, 1982. We will obtain permits for a seven day period beginning on that date, and while it is our intention to maintain the demonstration through the last day of winter (March 20, 1983), we will review that decision on a weekly basis. Conceivably, we could shorten the duration, but it would definitely not continue beyond the 20th of March.

Administration policies are resulting in a drastic increase in unemployment and extreme poverty and destitution. We will try to communicate this increase symbolically by increasing the number of tents from the current 9 to 20. We discovered this year that a maximum of 25 people could comfortably fit in the 9 tents, as compared with our predic-

tion of 50. In reality, while the number of "structures" will be doubling—our way of symbolically communicating the rapid rise in the number of homeless people in our nation—the actual number of persons using the site would be no more than we suggested for the winter just past. The site will be named "Reaganville II".

Congress has allowed the passage of legislation resulting in the devastation of programs on which millions of people rely for their very existence: their role and responsibility is clear. It is equally necessary to confront Congress with a symbolic presence that makes more visible and concrete the results of their inacti<sup>CN</sup>ve or unwillingness to challenge President Reagan. We *must* take the situation out of the abstract and begin to deal with the human cost of our decisions.

Thus, we also propose the erection of a second symbolic campsite, on the Mall, to be named "Congressional Village." We wish to erect 40 tents on that site, with a maximum capacity of 100. That demonstration would also begin on the first day of winter, December 21, 1982. We would file for seven-day permits. While we would also intend to remain on the Mall until the final day of winter, March 20, 1983, we would review the situation from week to week.

We have carefully considered the rights of others in making these plans, and we feel that our proposal will in no way deny others their legitimate right to use and enjoy these locations. We have proposed doubling the number of tents in Lafayette Park. Our experience this year convinces us that it will not significantly impinge on the rights of others, while allowing us to communicate a message that stresses numbers and growth. We would still be limited to a very small section of the park, just as we would be limited to a small section of the Mall.

No food will be served on either site, nor will toilet facilities be provided. We would be willing to assume responsibility for a "porta-john" for one or both sites, if Interior officials thought it advisable.

Our proposal does not differ from this year's: a symbolic campsite where the homeless may gather, to become visible and accessible, and through their visibility and accessibility



to communicate their humanity, their need, and their plight to the government and to the public, in the *only* real way open to them.

If there was ever any question as to whether sleeping was a necessary element in this demonstration, it should be answered by now. No matter how hard we tried to get them to come to Reaganville, they simply would not come, until sleeping was permitted. This was not the result of lack of encouragement, but because they had no reason to. It is difficult, if not impossible, for people who have adequate food, shelter, and clothing, to understand what it means to barely survive on the day to day basis that the homeless must.

That inability to understand does not change the reality: the homeless are not like others; they do not have open to them the options that others do. They are a unique class of people, a result of a very real handicap. So, absent a survival-related reason for being in Lafayette Park—something such as a meal or the chance to sleep in relative warmth—they did not and would not come. Not even we, and few if any have more experience in working with the homeless, could accomplish that.

While we can and have acted as advocates and spokespersons for the nation's homeless, they *must* begin to speak for themselves. To do so they must be visible and accessible. On the evening when the new and controversial china was first used in the White House, reporters were able to come across the street after the dinner, and ask homeless men and women who were huddled for warmth in the tents what *they* thought of the new \$1000 a setting service. That would not have been possible for either the reporters or the homeless if it had not been for the accessible and controlled environment of Reaganville.

Without the incentive of sleeping space or a hot meal, the homeless would not come to the site. Nor would they be allowed the right to speak symbolically and politically, as they must do if they are to have any hope for change. If sleeping were not permitted, we would not erect tents on either the Mall or in Lafayette Park. In some ways such a demonstration would be counter-productive, further ab-

stracting what is already far too abstract: the human cost and misery produced by the cuts in services and programs on which people depend for their continued existence. Were the homeless to be denied this forum, no avenue of speech or redress would be open to them.

We mention this because we know that our plans were not well understood last year, and we hope to help you better understand the situation this year. That understanding is critical to those who, in ever-growing numbers, are forced to call the street their home.

It will take quite a bit of time and effort to obtain the use of 60 tents and the granting of the necessary permits will greatly enhance the possibility. We are not in a position to buy tents, and the legality of a demonstration is extremely important in asking organizations or manufacturers for a donation. Thus, to take care of the logistical considerations, we ask you to please expedite this application.

Given the nature of our proposed activities and the U.S. Court of Appeals ruling in *CCNV v. Watt*, we see no reason why arrangements cannot be concluded expeditiously.

Thank you for your speedy attention to this matter.

EXHIBIT B  
C.A. No. 82-2501

In Reply Refer to:  
A8227(NCR-PA)  
Jul 9, 1982

Mr. Mitch Snyder  
1345 Euclid Street, NW  
Washington, DC 20009

Dear Mr. Snyder:

This responds to your application on behalf of the Community for Creative Non-Violence for a permit to conduct a demonstration on the Mall and in Lafayette Park from December 21, 1982, to December 28, 1982. Your application for demonstration activities on those dates has been granted. The erection of a symbolic city to emphasize the plight of the poor and homeless is hereby permitted.

However, we cannot permit that portion of your activities that involves camping in those park areas by demonstration participants. Regulations published in 47 FR 24299 (June 4, 1982) amending 36 C.F.R. § 50.19 and 50.27 clarify the prohibitions against camping in park areas not designated as public camp grounds. The term "camping" is defined in the regulations as the use of park lands for living accommodation purposes. These regulations were adopted to clarify the regulations at issue in *Community for Creative Non-Violence v. Watt* by specifying those activities that are prohibited outside of designated camping areas. We are enclosing a copy of that publication for your convenience.

After carefully reviewing your application and supporting document, we have determined that those proposed activities involving the actual housing of fifty to one-hundred persons on park lands, including provisions for sleeping and eating, constitute camping. Since Lafayette Park and the Mall are not designated public camp grounds, such activities are contrary to present regulations governing the use of the National Capital Parks. Therefore, that portion of your activities concerning the use of park

lands for the living accommodation purposes of demonstration participants is prohibited.

We must also point out that while tents or other temporary structures may be used for symbolic or logistical purposes in a demonstration, the regulations cited earlier clarify the prohibition against use of those temporary structures for camping purposes. Therefore, if your tents are used for the living accommodation purposes of the demonstration participants, such use will be contrary to Federal regulations.

If you wish to further discuss the details of your demonstration or if you have questions concerning this matter, please contact Sandra Alley, Associate Regional Director, Public Affairs, at (202) 426-6700.

Sincerely,

Robert Stanton  
*Regional Director,  
National Capital Region*  
*Enclosure*

**Supreme Court of the United States**

No. 82-1998

JAMES G. WATT, SECRETARY OF THE INTERIOR, ET AL.,  
PETITIONERS,

*v.*

COMMUNITY FOR CREATIVE NON-VIOLENCE, ET AL.

ORDER ALLOWING CERTIORARI. Filed October 3, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.